

**Memorandum of Understanding  
For Emission Monitoring of In Situ Burns  
  
Between The  
  
United States Environmental Protection Agency  
  
And  
  
The Unified Area Command for the  
Deepwater Horizon Spill of National Significance.**

**I. PURPOSE/PARTIES/OBJECTIVES/GOALS**

The purpose of this Memorandum of Understanding (MOU) is to establish a collaborative relationship between the United States Environmental Protection Agency (EPA) Office of Research and Development, National Risk Management Research Laboratory and the Unified Area Command for the Deepwater Horizon Spill of National Significance including the U.S. Coast Guard (USCG) components thereof, and BP ~~Exploration & Production Company p.l.c.~~ (BP) for particular and finite research activities associated with an oil spill in the Gulf of Mexico. Specifically, EPA and the Unified Area Command (UAC) seek to collaborate on the conduct of emissions monitoring of and the collection of emissions samples from in situ burns associated with remediation of the oil spill that occurred in the Gulf of Mexico as a result of the explosion on the Deepwater Horizon off-shore drilling rig on April 20, 2010.

It is the parties' intent to utilize this MOU to facilitate the launch of EPA aerial testing equipment to monitor emissions/collect emissions samples from in situ burns related to the ongoing response to the Deepwater Horizon Spill of National Significance (SONS) through utilization of vessels provided by BP.

**II. BACKGROUND**

The EPA is charged by Congress with protecting the Nation's air, land, and water resources. Under the mandate of national environmental laws, the EPA strives to formulate and implement actions leading to a compatible balance between human activities and the ability of natural systems to support and nurture life.

Within the EPA, the Office of Research and Development (ORD), National Risk Management Research Laboratory (NRMRL), is responsible for investigating technological and managerial approaches to reducing the risks from various environmental threats to human health and the environment. The ORD National Homeland Security Research Center (NHSRC) is responsible for researching answers to science questions related to homeland security associated with the protection of water and wastewater infrastructure, buildings, and broad outdoor areas.

The Air Pollution Prevention and Control Division (APPCD) of the NRMRL conducts research which assists the EPA's research, regulatory, and enforcement organizations in developing and enforcing regulations. The APPCD fulfills its mission by providing the results of research studies in the areas of air pollution prevention and control.

The Decontamination and Consequence Management Division (DCMD) of the NHSRC is charged with conducting decontamination and consequence management research with an emphasis on rapid and cost-effective cleanup and restoration of buildings and broad outdoor areas. DCMD researchers seek to identify and develop optimal technologies and procedures for effective and efficient decontamination while maximizing protection of decontamination crews, the general public, and the environment.

In light of the potentially far reaching implications associated with the environmental impact of the recent Gulf of Mexico oil spill, both from the oil and the various strategies being employed to contain and dispose of it, the government and the private sector must work together to assure the safety of human health. To that end, USCG, EPA and BP intend to join forces to facilitate the EPA's use of a unique double tethered balloon measurement system which features an aerial, balloon-borne instrument developed by the EPA to monitor/sample emissions from the controlled waste fossil fuel fires (in situ burns) being used to remediate oil from the surface of water in the Gulf of Mexico.

### **III. AUTHORITIES**

EPA enters into this MOU pursuant to the authority of Section 311(b)(9) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321(b)(9).

The UAC, through the Federal On-Scene Coordinator (FOSC), enters into this MOU pursuant to the authority of Section 311(c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321(c).

### **IV. ROLES AND RESPONSIBILITIES**

EPA and the UAC intend to work together to facilitate monitoring/sampling of emissions associated with in situ burns of oil in the Gulf of Mexico. In furtherance of those activities, the parties intend to proceed as follows:

Under this MOU, EPA ORD intends to:

1. Provide the services of its contractor, Arcadis, under EPA Contract No. EP-C-09-027, WA 1-09, Amendment 1, to support the EPA in its monitoring/sampling activities by:
  - a. Flying the balloon so that representative emission measurements can be taken;
  - b. Handling the logistics of the sampling campaign relative to matters such as purchases and personnel support;

- c. Arranging for travel as determined necessary by the EPA;
- d. Supporting the use of balloon-lofted sampling equipment above minimally controlled waste fossil fuel fires;
- e. Ensuring all involved contractor personnel have received the necessary training and are qualified to wear a respirator at the monitoring/sampling site(s).

f. Ensuring that appropriate risk assessments have been performed and mitigation measures are in place to address the identified risks.

g. Preparing an appropriate Health and Safety Plan for the project.

- 2. Provide appropriate Agency personnel to accompany the EPA contractor and determine the particular location(s) at which monitoring/sampling activities are to be performed;
- 3. Provide appropriate Agency personnel to determine the scientific aspects of the testing approach to be utilized by the EPA;
- 4. Provide appropriate Agency personnel to interpret the data collected.

5. ~~EPA will provide BP~~ [Why BP specifically? Shouldn't it be the UAC?] ~~with the full and complete raw data set~~ (What does "raw data set" mean? Monitoring and sampling data?), ~~the EPA reports, including the summary and conclusions, at the same time, they are submitted [to whom?] for independent peer review~~ [What independent peer review? What is the make-up of this peer review? Is this part of the UAC?], ~~At that time [during the independent peer review?], BP may~~ ~~can~~ provide comments which will be considered at the same time EPA is considering the comments from our [Whose? UAC's?] independent reviewers.

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Under this MOU, UAC intends to:

- 1. Provide appropriate USCG personnel to provide safety and in situ-burning orientation training for EPA personnel, EPA contractor and subcontractor personnel prior to commencement of monitoring/sampling activities.
- 2. Coordinate, and facilitate within the current response to the spill of national significance, Emissions Monitoring efforts with overall In-situ Burning and on-water response activities such that current response operations are not negatively impacted or negatively impaired.

Under this MOU, BP intends to:

- 1. Provide the Agency with use of a vessel(s) to transport EPA personnel, EPA contractor and subcontractor personnel, EPA Government Furnished Property (GFP), and such other equipment and supplies determined necessary by EPA or the FOOSC or his representative, to

the monitoring/sampling site(s) selected by EPA personnel;

2. Cooperate with the Agency's requests during monitoring/sampling activities to move the vessel as EPA personnel determines necessary and appropriate;

3. Cooperate with the Agency's determinations relative to when, and under what conditions, monitoring/sampling activities are conducted, and how many monitoring/sampling locations are utilized.

4. Review and provide comments on Risk Assessment(s) and Health and Safety Plans prepared by EPA.

## **V. LIMITATIONS**

A. As required by the Antideficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by USCG and EPA in this MOU are subject to the availability of appropriated funds and each party's budget priorities. Nothing in this MOU, in and of itself, obligates USCG and/or EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur any other financial obligations that would be inconsistent with USCG and/or EPA budget priorities.

B. This MOU is neither a fiscal nor a funds obligating document. Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures, and subject to separate subsidiary agreements that will be effected in writing by authorized representatives of both parties.

C. BP agrees not to submit a claim for compensation for services rendered to USCG and/or EPA in connection with any activities it undertakes in furtherance of this MOU. Furthermore, BP acknowledges that this MOU does not exempt BP from USCG, FOSC and/or EPA policies governing competition for assistance agreements.

D. BP agrees that it will indemnify and hold the USCG and EPA harmless from any claims of property damage, personal injury, or death arising from or related to any conduct or activities of BP employees, agents, contractors, or any other representatives BP has determined necessary to achieve the objectives of this MOU, regardless of who brings those claims. Claims of property damage, personal injury, or death resulting from the negligent or wrongful act(s) or omission(s) of USCG and/or EPA employees acting within the scope of their employment, conducting activities arising from or related to this MOU on the vessel provided by BP, will be governed by the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80

E. Except as provided in this Section V., paragraphs (A), (B), (C), and (D); and Section VII., INTELLECTUAL PROPERTY, this MOU is not legally binding and does not create any right or benefit, substantive or procedural, enforceable by law or equity, against BP, the USCG, or the EPA, their officers or employees, or any other person. This MOU does not

direct or apply to any person outside BP, USCG and the EPA.

F. The parties agree that the use of a vessel(s) provided by BP to travel to locations in the Gulf of Mexico determined by the EPA for purposes of launching a monitoring device and collect emissions samples does not require a separate Outside User and/or Entrance Upon Vessel Agreement;

G. Under Federal ethics rules, the USCG and EPA may not endorse products or services provided by private entities. Nothing in this MOU constitutes an endorsement by either party of the products, services, and/or fundraising activities of the other. BP agrees to not make statements to the public at workshops and meetings, in promotional literature, in news releases, product brochures, on its web site, or through any other media that imply the USCG and EPA endorse BP or any products or services offered by BP. In addition, BP agrees not to make statements that imply that the USCG and EPA support BP's efforts to raise public or private funds. Any statements or promotional materials prepared by BP that describe this MOU must be approved in advance by the USCG and EPA. However, the USCG, EPA and BP reserve the right to make limited factual statements to the public that describe any future cooperation between them that are subsequently implemented and were a result of preliminary activities under this MOU.

## **VI. PROPRIETARY INFORMATION**

To carry out the joint activities described in this MOU, BP may need to disclose proprietary information to the EPA. Proprietary information is defined as information that an affected business claims to be confidential and is not otherwise available to the public. BP agrees to clearly identify confidential information disclosed to the EPA in writing; and to clearly memorialize in writing, within a reasonable time, any confidential information initially disclosed orally. The EPA agrees not to disclose, copy, reproduce, or otherwise make available in any form whatsoever to any other person, firm, corporation, partnership, association, or other entity information designated as proprietary or confidential information without the consent of BP, except as such information may be subject to disclosure under the Freedom of Information Act (5 U.S.C. § 552), and EPA's regulations at 40 C.F.R. Part 2, or as otherwise authorized by law.

## **VII. INTELLECTUAL PROPERTY**

For purposes of this MOU, Intellectual Property (IP) may include any information, software, method, idea, writing, or know-how, or derivative work or improvement thereof, in tangible or intangible form, capable of being compensated for or of being protected under law or equity.

The parties agree that any copyrightable subject matter, including, but not limited to, journal articles, training, educational or informational material or software, created jointly by the parties from the activities conducted under this MOU may be copyrighted by BP. BP hereby grants to the government a royalty-free, nonexclusive, irrevocable right to reproduce, distribute, make derivative works, and publish or perform the work(s) publicly, or to

authorize others to do the same on its behalf.

In performing their respective obligations under this MOU it is the parties' intent that any right, title, or interest in any IP of a party or of a party's employees, agents, or affiliates, which has not arisen or does not arise directly from activities performed under this MOU (i.e., independent IP) will remain with that party.

With respect to the IP of a party directly arising from activities performed under this MOU (i.e., new IP), it is the parties' intent that the rights and ownership of any such new IP be allocated (solely or jointly) on the basis of the affiliation(s) of the creator(s) or developer(s) of the new IP, consistent with the terms of any employment, agency, or other contractual agreements or relationships of the creator(s) or developer(s).

The parties agree that any patented inventions created by BP pursuant to the terms of this MOU will be jointly owned by the parties regardless of inventorship, unless an alternative agreement indicates otherwise.

It is the parties' understanding that nothing in this MOU confers upon a party any immunity, implied or otherwise, from suit under any patent or other IP rights. Additionally, a disclosing party may not make representations as to the right of the other party to use the disclosed information. Furthermore, any disclosure under this MOU will not be construed as an inducement to the other party to infringe upon any IP rights of others.

## **VIII. POINTS OF CONTACT**

The following individuals are the designated points of contact for this MOU:

Samuel Coleman, Director  
Superfund Division  
Region 6  
United States Environmental Protection Agency  
1445 Ross Ave  
Dallas, TX 75202  
Telephone: 214.665.6701  
Email: coleman.sam@epa.gov

Wyman W. Briggs  
United States Coast Guard  
Strategic Planning Staff-  
Deepwater Horizon Response Unified Area Command  
1250 Poydras  
New Orleans, [La](#)  
Telephone: (504) 335-0929  
Email: Wyman.W.Briggs@uscg.mil

BP Point of Contact Name: \_\_\_\_\_  
BP Point of Contact Title: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Peter Carragher  
Vice President  
Deepwater Horizon Response Unified Area Command  
1250 Poydras  
New Orleans, La  
Telephone: (281) 450-0446  
peter.carragher2@bp.com

#### **IX. COMMENCEMENT, MODIFICATION, DURATION, TERMINATION, NOTICE**

This MOU is effective upon the date of the last signature of the parties in Section X of this MOU, and, unless otherwise terminated earlier, it is the parties' intent for it to remain in effect until the one year anniversary of that date. However, on or before the one year anniversary, the term of this MOU may be subsequently extended in time or renewed as mutually agreed to by the parties in a signed writing.

The parties do not intend for the potential expiration or earlier termination of this MOU to act to terminate the provisions set forth in any subsidiary agreements, unless a particular subsidiary agreement states otherwise. It is also the parties' intent that any modification, extension, or renewal of this MOU has no effect on the terms or conditions of any other agreement that has been or may be independently executed by the parties, unless a specific, corresponding agreement states otherwise.

This MOU may be amended at any time, as mutually agreed to in a signed writing executed by the parties. Furthermore, either party may terminate its participation in this MOU at any time, without cause, by providing written notice of termination in care of the other party's identified POC(s) in Section VIII., at least thirty (30) days prior to the desired termination date.

It is the parties' intent that all notices, requests, demands, and other communications given in conjunction with activities under this MOU be provided in writing. In addition, it is the parties' intent that any notice, request, demand, and other communication be deemed to have been given if it is delivered personally, or by a reputable overnight courier service, or by facsimile transmission or electronic mail with confirmation of receipt (followed by courier delivery of the same information) to the party to which the same is so given or made. It is

also the parties' intent that any notice, request, demand, or other communication be deemed to have been given as of the date it was delivered or electronically transmitted or five (5) days after it was mailed to the attention and address of the other party's contact person(s) identified in Section VIII.

**X. APPROVAL**

**IN WITNESS HEREOF**, the parties hereto caused this MOU to be executed and delivered by their duly authorized representatives effective as of the last date set forth in Section X. hereof:

\_\_\_\_\_  
Samuel Coleman, Director  
Superfund Division  
Region 6  
United States Environmental Protection Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
James A. Watson  
Rear Admiral, United States Coast Guard  
Federal On-Scene Coordinator  
BP/Deepwater Horizon Oil Spill

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (printed): \_\_\_\_\_ Date

Title: \_\_\_\_\_

\_\_\_\_\_  
Robert Fryar \_\_\_\_\_ Date

Vice President BP Exploration & Production Company